Received: April 6, 2018
IURC 30-Day Filing No.: 50122
Indiana Utility Regulatory Commission

April 6, 2018

Mary Becerra
Secretary of the Commission
Indiana Utility Regulatory Commission
101 West Washington Street, Suite 1500 E
Indianapolis, Indiana 46204
mbecerra@urc.in.gov
Electronically delivered

RE: Reply to NIPSCO's Response to CAC and ELPC Objection

Reply to NIPSCO's Response to Objection on behalf of
Citizens Action Coalition and the Environmental Law & Policy Center

Pursuant to Rule 170 IAC 1-6-7(d)(1), which states that 30-Day filings that have not been resolved to the satisfaction of the objector shall not be presented for Commission approval, Citizens Action Coalition ("CAC") and the Environmental Law & Policy Center ("ELPC") respectfully submit this Reply to express their lack of satisfaction with NIPSCO's Response, filed on April 2, 2018, to CAC and ELPC's Objections filed on March 23, 2018. The Commission's procedures allow a party to reply to a response in similar contexts. *See*, *e.g*. 170 IAC 1-1.1-12(f). The Objections and Response at issue concerns NIPSCO's 30-day filing, filed on February 28, 2018, IURC 30-Day Filing No. 50122.

NIPSCO's response failed to satisfy ELPC and CAC's objection, as required by 170 IAC 1-6-7(d)(1), and the response raised a number of issues demonstrating why the Commission should open an investigation into Indiana's implementation of PURPA. There are three key reasons why the Commission should deny NIPSCO's 30-day filing and open an investigation into Indiana's PURPA implementation.

1. NIPSCO's Standard Contract Fails to Comply with Indiana and Federal Law.

In its response, NIPSCO attached its standard contract, which attached to this reply as Exhibit C, and there are three relevant requirements applicable to NIPSCO's standard contract. First, Indiana law requires electric utilities to enter into "long term" contracts for the purchase of energy and capacity by PURPA QFs. Burns Ind. Code Ann. § 8-1-2.4-4(a). Second, Indiana's PURPA regulations require electric utilities to file a standard contract that must include "[t]he term of the contract." 170 IAC 4-4.1-11(c)(1). Third, federal law requires that long-term contracts include the ability to obtain fixed rates. 18 C.F.R. § 292.304(d)(2)(ii); *see also Winding Creek Solar LLC v. Peevey*, _ F. Supp. 3d. _, No. 13-04934, 2017 WL 6040012, at *10 (N.D. Cal. 2017) (PURPA standard contract without option to fix rates over entire term conflicts with PURPA).

NIPSCO's standard contract fails to contain a term length, as required by 170 IAC 4-4.1-11(c)(1), and failure to provide a term length also fails to provide the opportunity for a "long term" contract, as required by Burns Ind. Code Ann. § 8-1-2.4-4(a). In NIPSCO's standard

contract the term length is left blank. *See* Exhibit C at 2. By leaving the term length blank, NIPSCO fails to comply with Indiana law requiring "the term of the contract," 170 IAC 4-4.1-11(c)(1), and fails to provide a "long term" contract, as required by Burns Ind. Code Ann. § 8-1-2.4-4(a). In addition, NIPSCO failed to respond to the affidavit of a potential QF developer that stated that term lengths of 15- to 20-years are required to obtain financing. *See* Affidavit of Sam Kliewer at ¶ 3[1].

In NIPSCO's standard contract, the rates for purchase are changed every year, which means avoided cost rates are not fixed if the contract is longer than one year. *See* Exhibit C at 3. Nowhere else in the standard contract is there an option for fixed rates in contracts longer than a year, as required by 18 C.F.R. § 292.304(d)(2)(ii).

NIPSCO's standard contract's change to the avoided cost every year conflicts with 18 C.F.R. § 292.304(d)(2)(ii), which "requires QFs to have the option of fixing the contract price for the delivery of energy and capacity "at the time the obligation is incurred." *See Allco Renewable Energy Ltd v. Massachusetts Electric Co.*, 208 F. Supp. 3d 390, 400 (D. Mass. 2016) *aff'd* 875 F.3d 64 (1st Cir. 2017) (lack of option to obtain fixed rate in long term contracts renders state's PURPA implementation in conflict with PURPA); *Winding Creek Solar LLC v. Peevey*, _ F. Supp. 3d. _, No. 13-04934, 2017 WL 6040012, at *10 (N.D. Cal. 2017) (PURPA standard contract without option to fix rates over entire term conflicts with PURPA).

The North Carolina Utilities Commission ("NCUC") recently rejected Duke Energy Carolinas, LLC, similar proposal to change the avoided cost rates in its standard contract every two years.[2] The NCUC explained:

> The Commission determines, for purposes of this case, that NIPSCO's proposed two-year reset in the avoided energy rate component of the standard offer rate should not be adopted at this time. While some larger facilities may be able to negotiate for different terms and degrees of certainty with regard to securing capital and return on investment, the proposed two-year energy rate reset for facilities eligible for the standard offer rates adds an additional element of uncertainty to their ability to reasonably forecast their anticipated revenue, which may make obtaining financing more difficult than a longer term, fixed-rate PPA.[3]

Annual avoided cost updates, like those in NIPSCO's standard contract, would be even more uncertain than Duke Energy Carolina's unsuccessful biennial update proposal in North Carolina. According to the testimony of Cypress Creek Renewables, a QF developer in North Carolina, annual or biennial change to contract prices make QF financing prohibitively difficult:

> Cypress Creek argues that financing parties would view a ten-year PPA with a two-year readjustment to the avoided energy rate no more favorably than they

[1] This affidavit was filed with ELPC and CAC's Objection to NIPSCO's 30-day filing.
[2] *See In re Biennial Determination of Avoided Cost Rates for Electric Utility Purchases from Qualifying Facilities – 2016*, Docket No. E-100 SUB 148, Order at 7 ¶ 10 (N. C. Pub. Util. Comm'n Oct. 11, 2017) *available at* https://perma.cc/UUJ6-2G5Q.
[3] *Id.*, Order at 69.

> would a two-year contract, which would not be financeable. Cypress Creek witness McConnell testified that rates fixed over the term of the contract are critical to securing financing, stating that "fixed rates for a fixed period of time create financeable contracts," and that what creates value in the contract is having a set avoided cost rate for a set period of time. He further testified that without these fixed rates, lenders are unwilling to bet on what the avoided cost rates will be going forward.[4]

NIPSCO's failure to offer QFs the choice of a long-term fixed rate contract conflicts with PURPA, as interpreted by FERC and other recent state commission orders. In addition, the lack of fixed rate contracts and its negative effect on QF development is an issue the Commission should investigate further, and the Commission should require NIPSCO to offer QFs the ability to fix rates over an entire term, as required by PURPA.

2. NIPSCO Has Not Complied With All Requirements of 18 C.F.R. § 292.302(b).

In its response, NIPSCO admitted that it has not filed *all* of the information required by 18 C.F.R. § 292.302(b). NIPSCO Response at 3 ("NIPSCO has complied with *many* of the requirements of 18 CFR § 292.302(b) through its Integrated Resource Plan ('IRP') which was filed on November 1, 2016.") (emphasis added). NIPSCO's response indicates it has only supplied the information required by 18 C.F.R. § 292.302(b)(2)-(3) (capacity additions over 10 years and their costs), but did not indicate it has supplied the forecasted avoided cost information required by 18 C.F.R. § 292.302(b)(1). Accordingly, because 18 C.F.R. § 292.302(b) requires this information to be filed at least every two years, NIPSCO is not in compliance because it has not filed the information required by § 292.302(b)(1) in the last two years.

In addition, although NIPSCO's November 2016 IRP does show its planned capacity additions over the next ten years,[5] as required by 18 C.F.R. § 292.302(b)(2), nowhere in the IRP does it contain the "estimated capacity costs at completion of the planned capacity additions and planned capacity firm purchases, on the basis of dollars per kilowatt, and the associated energy costs of each unit, expressed in cents per kilowatt hour." 18 C.F.R. § 292.302(b)(3).

Perhaps these estimated capacity costs are available in the non-public version of the IRP, but that too fails to comply with the regulation. The regulation states that utilities "shall maintain for public inspection" these "estimated capacity costs." 18 C.F.R. §§ 292.302(b), 292.302(b)(3). The "public inspection" requirement preempts application of trade secret or confidential treatment of the information required to comply with this regulation.[6] If NIPSCO wants to use its

---

[4] *Id*., Order at 67.
[5] NIPSCO, 2016 INTEGRATED RESOURCE PLAN at 158 (Nov. 2016), *available at* https://perma.cc/A4BV-Q8YA.
[6] *See In Re Investigation of Central Maine Power Company's Resource Planning, Rate Structures, and Long-Term Avoided Costs (Rate Design Phase)*, Docket No. 92-315, 1995 Me. PUC LEXIS 11 at *13-14 (Jan. 27, 1995 Me. Pub. Util. Comm'n). The Maine Public Utilities Commission stated:

> Plainly, under this federal regulation, the specified avoided cost information must be filed with state regulatory agencies and the information must be publicly available. The federal regulation expressly regulates state activities and, under the supremacy clause, undoubtedly precludes any state action that would make the specified information not publicly available, e.g., pursuant to state trade secret protection law. *Id*. at *13.

IRP to comply with 18 C.F.R. §§ 292.302(b)(3), then it cannot shield those estimated capacity costs from public view.

NIPSCO's lack of compliance with 18 C.F.R. § 292.302(b)(1) undermines the purpose of these avoided cost informational filings and this lack of compliance demonstrates the need for Indiana to investigate the issue further.

3. There Are Currently No Federal Investigations or Rulemakings into PURPA, and Even If There Were, It Should Not Stop the Commission from Exercising its Duly-delegated Authority to Implement PURPA and State Law.

NIPSCO believes an investigation of PURPA implementation is not warranted in Indiana because there are already federal investigations into PURPA ongoing and therefore the State should allow the federal government to dictate what Indiana should do. NIPSCO Response at 4-5. However, contrary to NIPSCO's assertions, there are no active FERC investigations or rulemakings related to PURPA. NIPSCO cited to a FERC order soliciting comments in Docket AD16-16, but FERC created that docket solely for its 2016 PURPA technical conference.[7] Conference participants filed their comments in Fall 2016, and FERC has taken no action and conducted no investigation or rulemaking following those comments.

NIPSCO misrepresented statements made by FERC's Chairman Neil Chatterjee. On October 30, 2017, Representative Tim Walberg sent a letter to FERC asking FERC to update its PURPA regulations. *See* Exhibit D. On November 29, 2017, FERC Chairman Neil Chatterjee responded with a two-paragraph letter and did not initiate an investigation or rulemaking in response to Walberg's letter. *See* Exhibit E. Nevertheless, NIPSCO attempts to use an excerpt of Neil Chatterjee's letter to explain "the purpose of this investigation," NIPSCO Response at 4, even though no such investigation exists and the Chairman's letter does not reference an active investigation or rulemaking.

NIPSCO also cited to a recent bill introduced in Congress as evidence of another federal investigation. That bill, titled the PURPA Modernization Act, H.R. 4476, has sat in a House of Representative subcommittee since December 1, 2017 and has yet to be offered up for a vote.[8] Even if it passes the committee stage, it is unlikely to pass the full House of Representatives or the Senate. In addition, the legislation only effects the size of QFs and how PURPA could interact with integrated resource plans—it has nothing to do with adequate contract term lengths under Indiana law or compliance with 18 C.F.R. 292.302(b).

NIPSCO's reliance on federal activity as a reason for why the Commission should not open an investigation rings hollow. PURPA operates under a cooperative federalism framework whereby FERC issued the primary regulations but the State of Indiana is delegated authority to implement those regulations at the state level. *See* 16 U.S.C. § 824a-3(f). Indiana has adopted

---

[7] *See Notice of technical conference re Implementation Issues under the Public Utility Regulatory Policies Act of 1978*, Docket No. AD16-16 (F.E.R.C. Feb. 9, 2016) available at https://perma.cc/TKU5-CBW9; *see also Supplemental Notice Concerning Technical Conference*, Docket No. AD16-16 (F.E.R.C. Mar. 4, 2016) available at https://perma.cc/A9TV-DLZW.

[8] *See* https://www.congress.gov/bill/115th-congress/house-bill/4476/all-actions

state laws and regulations to implement these requirements, including a state law that directs the commission to require electric utilities to enter into long-term contracts with alternate energy production facilities. Burns Ind. Code Ann. § 8-1-2.4-4(a). The existence, or not, of federal proceedings related to PURPA in no way negates the Commission's responsibility to implement and enforce existing state law. Finally, PURPA provides the Commission with the discretion to determine issues like contract term lengths, and, therefore, Indiana's discretion and authority to investigate such issues is unaffected by the hypothetical existence of federal investigations into matters unrelated to Indiana's requirement for "long term" contracts. Burns Ind. Code Ann. § 8-1-2.4-4(a).

Indiana should use its considerable discretion under PURPA to deny approval of NIPSCO's 30-day filing and open an investigation into PURPA implementation in the State. Issues for investigation should be adequate contract term lengths, compliance with 18 C.F.R. 292.302(b)'s biennial avoided cost information requirements, and other issues that the Commission determines are relevant. Other relevant issues could be how utilities calculate their avoided energy cost rates and whether the standard offer tariff and standard contracts should be available to QFs larger than 100 kW.

(signature page follows)

Dated April 6, 2018

Respectfully submitted,

Jennifer A. Washburn, Atty. No. 30462-49
1915 W. 18th Street, Suite C
Indianapolis, Indiana 46202
(317) 735-7764
jwashburn@citact.org

Jeffrey Hammons
Staff Attorney
Environmental Law & Policy Center
Chicago, IL 60601
(312) 795-3717
JHammons@elpc.org

THIS DOCUMENT IS A STANDARD FORM
PREPARED IN COMPLIANCE WITH 170 IAC 4-4.1-11.
IT IS NOT INTENDED AND SHOULD NOT BE CONSTRUED AS AN
OFFER TO PURCHASE CAPACITY AND ENERGY GENERATED BY
A SPECIFIC QUALIFYING FACILITY.
NIPSCO RESERVES THE RIGHT TO MAKE MODIFICATIONS OR
REVISIONS TO THIS STANDARD DOCUMENT, SUBJECT TO THE
REVIEW AND APPROVAL OF THE PUBLIC SERVICE COMMISSION OF INDIANA.

NORTHERN INDIANA PUBLIC SERVICE COMPANY

STANDARD TERMS AND CONDITIONS

For Purchase Of

CAPACITY AND ENERGY

From

QUALIFYING FACILITIES

June 4, 1985

COGENERATION AGREEMENT

This Agreement, entered into this _____ day of _____, 19 __, between _____, a _____, hereinafter called the "Qualifying Facility" and NORTHERN INDIANA PUBLIC SERVICE COMPANY, an Indiana corporation, hereinafter called the "Company," WITNESSETH:

STATUS OF QUALIFYING FACILITY

The qualifying facility owns a cogeneration and/or small power production facility which qualifies under the Order of the Pubic Service Commission of Indiana in Cause No. 37494. The qualifying facility wishes to sell, and the Company wishes to purchases electric power from the qualifying facility.

AMOUNT OF SALE AND PURCHASE

The qualifying facility agrees to sell and deliver and the Company agrees to purchase and accept delivery of the energy or energy and capacity as indicated below:

1. ENERGY _____ Kwh per Month

2. CAPACITY _____ Kw

CONTRACT TERM

The qualifying facility shall begin to supply electric service hereunder on or about _____, 19 __, and this contract shall then continue in effect for an initial term ending _____, 19 __, and from year to year thereafter unless cancelled by either party giving to the other not less than sixty days' prior written notice of the termination thereof at the expiration of the initial term or, at the end of the yearly period first occurring after the giving of such notice.

PAYMENT CONDITIONS

The Company agrees to pay the qualifying facility within 15 days from the date of bills issued monthly by the qualifying facility for all electric service supplied hereunder in accordance with the schedule of rates for such service applicable at the time such service is supplied.

APPLICABILITY OF RATE SCHEDULE

This contract is in accordance with the present current schedule of rates on file with, and approved by, the Public Service Commission of Indiana, which rates are subject to change as provided by law. In case such rates are decreased, the qualifying facility may cancel this contract by giving written notice thereof at any time prior to 60 days after the rate decrease becomes effective. Electric service supplied after such lower rates become effective shall be taken and paid for at such decreased rates.

The terms, provisions and conditions of the rate schedule applicable to the electric service supplied hereunder are made a part of this contract, and shall be binding upon the parties hereto.

The Company's rate schedule for purchases from cogeneration and small power production facilities applicable at the date of this contract to the electric service supplied hereunder is, by reference thereto, hereby made a part hereof, and the Customer acknowledges receipt of a copy of the same.

INTERCONNECTION TERM AND CONDITIONS

The qualifying facility shall reimburse the Company for all interconnection costs the Company has reasonably incurred, and the Company will connect its power supply lines to the terminals of a service entrance connection which shall be provided by the qualifying facility and located on an outside wall of the qualifying facility's building or at a point

satisfactory to the Company. The qualifying facility shall install, operate, and maintain in good order such relays, locks and seals, breakers, automatic synchronizers, and other control and protective apparatus as shall be designated by the Company for safe, efficient and reliable operation in parallel to the Company's system. The qualifying facility shall bear full responsibility for the installation and safe operation of this equipment. Breakers capable of isolating the qualifying facility from the Company shall at all times be immediately accessible to the Company. The Company may isolate any qualifying facility at its own discretion if the Company believes continued parallel operation with the qualifying facility creates or contributes to a system emergency.

All wiring and other electric equipment installed by the qualifying facility shall be maintained by the qualifying facility at all times is conformity with the requirements of the National Board of Fire Underwriters and other authorities having jurisdiction, and an inspector from the Company shall be permitted to inspect qualifying facility's wiring and apparatus and the Company may transmit his recommendations in connection with any such inspection to the qualifying facility, but nothing herein contained shall mean, or be construed to mean, that the Company shall be required to inspect or examine, or in any way be responsible for the condition of the conduits, pipes, wires or appliances on the qualifying facility's premises.

METERING TERMS AND CONDITIONS

Subject to the provisions of the rate schedule applicable at the time of the service, electric service to be used under the terms of this contract shall be measured, as to maximum demand, energy and power factors by meters to be installed by the Company on or near the premises of the qualifying facility. The qualifying facility hereby agrees to provide

suitable electric connections for such meters and suitable housing for the same, and upon the registration of these meters, all bills other than bills for the minimum payments shall be calculated.

The Company shall at all times have the right to inspect and test meters and if found defective to repair, or replace them at its option. Such meters shall be tested periodically in accordance with the Rules and Standards of Service prescribed by the Public Service Commission of Indiana. At the qualifying facility's request, the Company shall inspect and test such meters once each yearly period.

The Company shall repair and re-test or replace a defective meter within a reasonable time. During the time there is no meter in service, it shall be assumed that the power delivered is the same as the delivery of power of the qualifying facility during similar periods of the qualifying facility's operations.

In case of impaired or defective service, the qualifying facility shall immediately give notice to the Company by telephone, confirming such notice in writing on same day notice is given.

INDEMNIFICATION

The Company and the qualifying facility shall indemnify and hold the other party harmless from and against all claims, liability, damages and expenses, including attorneys' fees, based on any injury to any person, including loss of life, or damage to any property, including loss of use thereof, arising out of, resulting from or connected with, or that may be alleged to have arisen out of, resulted from or connected with, an act or omission by such other party, its employees, agents, representatives, successors or assigns in the construction, ownership, operation or maintenance of such party's facilities used in connection with this Agreement. Upon the written request of the party seeking indemnification

under this provision, the other party shall defend any suit asserting a claim covered by this provision. If a party is required to bring action to enforce its indemnification rights under this provision, either as a separate action or in connection with another action, and said indemnification rights were upheld, the party from whom the indemnification was sought shall reimburse the party seeking indemnification for all expenses, including attorneys' fees, incurred in connection with such action.

FORCE MAJEURE

Neither the Company nor the qualifying facility shall be liable to the other for damages caused by the interruption, suspension, reduction or curtailment of the delivery of electric energy hereunder due to, occasioned by or in consequence of, any of the following causes or contingencies, viz: acts of God, strikes, lockouts, or other industrial disturbances; acts of public enemies; orders or permits or the absence of the necessary orders or permits of any kind which have been properly applied for from the government of the United States, the State of Indiana, any political subdivision or municipal subdivision or any of their departments, agencies or officials, or any civil or military authority; unavailability of a fuel or resource used in connection with the generation of electricity; extraordinary delay in transportation; unforeseen soil conditions; equipment, material, supplies, labor or machinery shortages; epidemics; landslides; lightning; earthquakes; fires; hurricanes; tornadoes; storms; floods; washouts; drought; arrest; war; civil disturbances; explosions; breakage or accident to machinery, transmission lines, pipes or canals; partial or entire failure of utilities; breach of contract by any supplier, contractor, subcontractor, laborer or materialman; sabotage; injunction; blight; famine; blockade; or

quarantine. The party suffering an occurrence of Force Majeure shall, as soon as is reasonably possible after such occurrence, give the other party written notice describing the particulars of the occurrence and shall use its best efforts to remedy its inability to perform, provided, however, that the settlement of any strike, walkout, lockout or other labor dispute shall be entirely within the discretion of the party involved in such labor dispute.

FAILURES TO PERFORM

The parties agree that the amount of the capacity payment which the Company is to make to the qualifying facility is based on the agreed value to the Company of the qualifying facility's performance of its obligation to provide capacity during the full term of this Agreement. The parties further agree that in the event the Company does not receive such full performance by reason of a termination of this Agreement prior to its expiration or reduction in the amount of capacity agreed to be provided by the qualifying facility as specified in this Agreement, (1) the Company shall be deemed damaged by reason thereof, (2) it would be impracticable or extremely difficult to fix the actual damages to the Company resulting therefrom, (3) the reductions, offsets and refund payments as provided hereafter, as applicable, are in the nature of adjustments in prices and are to be considered liquidated damages, and not a penalty, are fair and reasonable, and (4) such reductions, offsets and refund payments represent a reasonable endeavor by the parties to estimate a fair compensation for the reasonable damages that would result from such premature termination or failure to deliver the specified amount of capacity.

In the event this Agreement is terminated or the contract capacity is reduced prior to the end of the contract term, the qualifying facility

shall refund to the Company the capacity payments in excess of those capacity payments which would have been made had all or the reduced capacity been subject to a capacity rate based on the actual term of delivery to the Company.

Except in the event of Force Majeure as defined in this Agreement, if, within, any twelve-month period during the term of this Agreement ending on the anniversary date of the date of the qualifying facility first provided capacity to the Company under this Agreement, the qualifying facility fails to provide the Company with the capacity specified in this Agreement, the capacity for which the qualifying facility shall be entitled to capacity payments during the subsequent twelve-month period ("the probationary period") shall be reduced to the capacity provided during the prior twelve-month period. If, during the probationary period, the qualifying facility provides the capacity specified in this Agreement, the Company, within thirty days following the end of the probationary period, shall reinstate the full capacity amount originally specified in this Agreement. If, during the probationary period, the qualifying facility again fails to provide the capacity specified in this Agreement, the Company may permanently reduce the capacity purchased from the qualifying facility for the remainder of the term of this Agreement. Such causes or contingencies affecting performance shall not relieve the Company nor the qualifying facility of liability in the event of its concurring negligence or in the event of failure of either to use due diligence to remedy the situation and remove the cause in an adequate manner and with all reasonable dispatch, nor shall such causes or contingencies or any thereof relieve either from its obligation to pay amounts due hereunder during such interruption or suspension of service.

INTERRUPTION OR CURTAILMENT OF PURCHASE

The Company reserves the right to interrupt purchase at any time when necessary to make emergency repairs. For the purpose of making other than emergency repairs, the Company reserves the right to disconnect the qualifying facility's electric system for four (4) consecutive hours on any Sunday, or such other day or days as may be agreed to by the qualifying facility and the Company, provided forty-eight (48) hours' notification previous to the hour of cut-off is given the qualifying facility of such intention.

All terms and stipulations made or agreed to by the parties in relation to said electric service are completely expressed and merged in this contract, and no previous promises, representations or agreements made by the Company's officers or agents, shall be binding on the Company, and no previous promises, representations or agreements made by the qualifying facility's officers or agents, shall be binding on the qualifying facility, unless herein contained. The terms of this contract cannot be added to, varied or waived, either verbally or in writing, by any agent, solicitor, or other person connected with the Company, or connected with the qualifying facility, excepting executive officers of the Company and officers of the qualifying facility.

From and after the date when electric service is commenced under this contract, this contract shall supersede and terminate any and all existing agreements between the parties hereto under the terms of which the qualifying facility furnishes and the Company receives electric service at the premises covered by this Agreement.

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors or assigns.

This Agreement shall not be binding upon the Company until approved by the president or a vice-president of the Company and attested by the secretary or an assistant secretary.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed in duplicate the day and year first above written.

Attest:

By _____
Assistant Secretary

NORTHERN INDIANA PUBLIC SERVICE COMPANY

By _____
Its _____

Attest:

_____
(Qualifying Facility)

By _____
_____ Secretary

By _____
Its _____

AD 16-16

Congress of the United States
Washington, DC 20515

October 30, 2017

The Honorable Neil Chatterjee
Chairman
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Dear Mr. Chairman:

We are writing to urge the Federal Energy Regulatory Commission (FERC) to update its implementing regulations for the Public Utility Regulatory Policies Act (PURPA). As you know, PURPA was enacted in 1978 in response to an oil crisis. Over the last 40 years, we have seen dramatic changes in energy markets that have resulted in an abundance of domestic energy supplies. Two of the most significant changes have been the development of competitive wholesale electricity markets, which enable qualifying facilities (QFs) under PURPA to reach more willing buyers, and the declining costs for natural gas and renewable energy resources. These developments, along with others, have changed both the economics of QF development, as well as the impact of an increasing amount of QF output being placed on the transmission grid.

While there are aspects of the reform of PURPA that will require congressional action, there are also regulatory changes that FERC can make to ensure that its implementing regulations reflect the changes occurring in electricity markets. Many of these changes are already familiar to FERC and were addressed at the technical conference that your agency held on June 29, 2016, in Docket No. AD16-16-000. Among the issues addressed at the conference was the purported gaming of FERC's "one-mile rule" (*see* 18 CFR § 292.204(a)(2)) by certain QF developers. More than a year later, the House Energy and Commerce Subcommittee on Energy heard testimony during its September 6, 2017, hearing on PURPA, that some QFs are continuing to take advantage of FERC's regulations to effectively build projects that exceed the various size thresholds in the wholesale electricity markets regulated by FERC. However, since FERC has made clear in its decisions that its one-mile rule is irrebuttable, parties involved cannot challenge the lawfulness of these projects.

Eliminating the opportunity for certain QF developers to game FERC's one-mile rule will directly benefit electricity customers, who are paying billions of dollars in above-market prices for QF power sold under mandatory PURPA contracts. While the Energy and Commerce Committee considers additional reforms to PURPA, we encourage FERC to address the concerns raised at its 2016 technical conference and to use its authority to undertake needed modernization to the Commission's PURPA one-mile rule regulations while taking into consideration non-geographic factors as well.

2017-00119

As Congress continues its review of PURPA, we request the list of changes and reforms the Commission believes it can make under its existing authority.

We look forward to working with the Commission to ensure our constituents can benefit from lower cost electricity, more competitive markets and advancements made in renewable generation.

Sincerely,

Tim Walberg
Member of Congress

Fred Upton
Member of Congress

Joe Barton
Member of Congress

Marsha Blackburn
Member of Congress

Robert E. Latta
Member of Congress

Gregg Harper
Member of Congress

David B. McKinley, P.E.
Member of Congress

H. Morgan Griffith
Member of Congress

Bill Johnson
Member of Congress

Dave Loebsack
Member of Congress

Larry Bucshon, M.D.
Member of Congress

Bill Flores
Member of Congress

Markwayne Mullin
Member of Congress

Kevin Cramer
Member of Congress

Kurt Schrader
Member of Congress

Billy Long
Member of Congress

Richard Hudson
Member of Congress

Document Content(s)

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

November 29, 2017

OFFICE OF THE CHAIRMAN

The Honorable Tim Walberg
U. S. House of Representatives
Washington, *D.C. 20515*

Dear Congressman Walberg:

Thank you for your October 30, 2017, letter regarding the Public Utility Regulatory Policies Act of 1978 (PURPA).

The energy landscape that existed when PURPA was conceived was fundamentally different than it is today; solar and wind power were fledgling technologies, there was no open access to wholesale electricity markets, and natural gas was in scarce supply. None of those things are true today. In light of such changes, I believe that the Commission should consider whether changes in its existing regulations and policies could better align PURPA implementation with modern realities.

As you know, the Commission held a technical conference on June 29, 2016, in Docket No. AD16-16-000, to examine issues related to PURPA. Subsequently, the Commission solicited written comments from interested parties, which were submitted by November 7, 2016. One particular area where many parties have indicated a need for a different approach is the "one-mile rule" for qualifying facilities. Of course, other such areas may exist, too, and we owe it to stakeholders to continue taking a hard look at our regulations to identify those opportunities for improvement. Please be assured that I will keep your concerns in mind as the Commission explores these important issues. Your letter and this reply will be placed in the public record of Docket No. AD16-16-000.

If I can be of any further assistance, please do not hesitate to contact me.

Sincerely,

Neil Chatterjee
Chairman

Document Content(s)

14769327.tif.....1-1